

APPENDIX

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1973

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No. 73-206

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JACOB J. PARKER, as Warden of the United States  
Penitentiary, Lewisburg, Pennsylvania, and STANLEY  
R. RESOR, as Secretary of the Army,

*Appellants,*

v.

HOWARD B. LEVY,

*Appellee.*

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ON APPEAL FROM THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT

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MOTION TO DISMISS OR AFFIRM

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**APPENDIX**

CHARGE II: Violation of the Uniform Code of  
Military Justice, Article 134

*Specification:* In that Captain Howard B. Levy, U.S.  
Army, Headquarters & Headquarters Company, United  
States Army Hospital, Fort Jackson, South Carolina,  
did, at Fort Jackson, South Carolina, on or about the  
period February 1966 to December 1966, with design to  
promote disloyalty and disaffection among the troops,  
publicly utter the following statements to divers en-

listed personnel at divers times: "The United States is wrong in being involved in the Viet Nam War. I would refuse to go to Viet Nam if ordered to do so. I don't see why any colored soldier would go to Viet Nam; they should refuse to go to Viet Nam and if sent should refuse to fight because they are discriminated against and denied their freedom in the United States, and they are sacrificed and discriminated against in Viet Nam by being given all the hazardous duty and they are suffering the majority of casualties. If I were a colored soldier I would refuse to go to Viet Nam and if I were a colored soldier and were sent I would refuse to fight. Special Forces personnel are liars and thieves and killers of peasants and murderers of women and children", or words to that effect, which statements were disloyal to the United States, and prejudicial to good order and discipline in the armed forces.

**ADDITIONAL CHARGE I: Violation of the Uniform Code of Military Justice, Article 133**

*Specification:* In that Captain Howard B. Levy, United States Army, Headquarters and Headquarters Company, United States Army Hospital, Fort Jackson, South Carolina, did, at the United States Army Hospital, Fort Jackson, South Carolina, at divers times during the period from on or about February 1966 to on or about December 1966 while in the performance of his duties at the United States Army Hospital, Fort Jackson, South Carolina, wrongfully and dishonorably make the following statements of the nature and to and in the presence and hearing of the persons as hereinafter more particularly described, to wit: (1) Intemperate, defamatory, provoking, and disloyal statements to special forces enlisted personnel present for training in the

United States Army Hospital, Fort Jackson, South Carolina, and in the presence and hearing of other enlisted personnel, both patients and those performing duty under his immediate supervision and control and dependent patients as follows: "I will not train special forces personnel, because they are 'liars and thieves,' 'killers of peasants,' and 'murderers of women and children,' " or words to that effect; (2) Intemperate and disloyal statements to enlisted personnel, both patients and those performing duty under his immediate supervision and control as follows: "I would refuse to go to Vietnam if ordered to do so. I do not see why any colored soldier would go to Vietnam. They should refuse to go to Vietnam; and, if sent, they should refuse to fight because they are discriminated against and denied their freedom in the United States and they are sacrificed and discriminated against in Vietnam by being given all the hazardous duty, and they are suffering the majority of casualties. If I were a colored soldier, I would refuse to go to Vietnam; and, if I were a colored soldier and if I were sent to Vietnam, I would refuse to fight," or words to that effect; (3) Intemperate, contemptuous, and disrespectful statements to enlisted personnel performing duty under his immediate supervision and control, as follows: "The Hospital Commander has given me an order to train special forces personnel, which order I have refused and will not obey," or words to that effect; (4) Intemperate, defamatory, provoking, and disloyal statements to special forces personnel in the presence and hearing of enlisted personnel performing duty under his immediate supervision and control, as follows: "I hope when you get to Viet Nam something happens to you and you are injured," or words to that effect; all of which statements were made

to persons who knew that the said Howard B. Levy was a commissioned officer in the active service of the United States Army.

## **REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES**

### **Rule 10.**

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2. The notice of appeal shall specify the parties taking the appeal, shall designate the judgment or part thereof appealed from, giving the time of its entry, and shall specify the statute or statutes under which the appeal to this court is taken. A copy of the notice of appeal shall be served on all parties to the proceeding in the court where the judgment appealed from was issued, in the manner prescribed by Rule 33, and proof of such service shall be filed with the notice of appeal.

3. If the appeal is taken from a federal court, the notice of appeal shall be filed with the clerk of such court. . . .

### **Rule 33.**

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3. Whenever proof of service is required by these rules, it must be stated that all parties required to be served have been served and such service may be shown, either by indorsement on the document served or by separate instrument, by any one of the methods set forth below; and it is not necessary that service on each party required to be served be effected in the same manner or evidenced by the same proof:

(a) By an acknowledgment of service of the document in question, signed by counsel of record for the party served.

(b) By a certificate of service of the document in question, reciting the fact and circumstances of service in compliance with the appropriate paragraph of this rule, such certificate to be signed by a member of the bar of this court representing the party in behalf of whom such service has been effected. If counsel certifying to such service has not up to that time entered his appearance in this court in respect of the cause in which such service is made, his appearance shall accompany the certificate of service if the same is to be filed in this court.

(c) By an affidavit of service of the document in question, reciting the fact and circumstances of service in compliance with the appropriate paragraph of this rule, whenever such service is effected by any person not a member of the bar of this court.

4. Whenever proof of service is required by these rules, it must accompany or be indorsed upon the document in question at the time such document is presented to the clerk for filing. Any document filed with the clerk by or on behalf of counsel of record whose appearance has not previously been entered must be accompanied by an entry of appearance.